

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION	)	
FOR BENEFICIAL WATER USE PERMIT	)	ORDER TERMINATING
NO. 52861-s76F BY JOSE VILLARREAL	)	APPLICATION

\* \* \* \* \*

On August 31, 1984, a hearing in the above-entitled matter was convened in the Conference Room of the Department of Natural Resources and Conservation, Helena, Montana. Neither the Applicant nor his counsel of record appeared at the hearing. Although the Applicant made an oral request for a continuance on the day of the hearing, no evidence was submitted to show the existence of good cause for continuance. See, Administrative Rules of Montana 36.12.222, 36.12.208.

Therefore, in the absence of a showing by the Applicant as to why a continuance should be granted and why he should not be found to be in default,

IT IS HEREBY ORDERED THAT Application for Beneficial Water Use Permit No. 52861-s76F is dismissed without prejudice.

DONE this 21<sup>st</sup> day of September, 1984.

Peggy A. Elting  
Peggy A. Elting, Hearing Examiner  
Department of Natural Resources  
and Conservation  
32 S. Ewing, Helena, MT 59620  
(406) 444 - 6612

**CASE # 52861**

MEMORANDUM

A water right contested case hearing in the matter of the Application for Beneficial Water Use Permit No. 52861-s76F by Jose Villarreal was scheduled to be held on August 31, 1984, in the Conference Room of the Department of Natural Resources and Conservation in Helena, Montana.

The Hearing Examiner, DNRC Field Office personnel, Objector John Manley, and Objector Larry Semenza through counsel Greg Luinstra appeared at the specified place and time. However, neither the Applicant nor his attorney made an appearance.

Helena Water Rights Bureau Field Office engineer Jim Beck stated that Mr. Villarreal had contacted him earlier in the morning and said that he would not be attending the hearing. He made a verbal request to Mr. Beck to have the hearing continued at another time because he wanted to take some immediate action concerning a quiet title action on the property involved.

Mr. Beck stated that he had informed Mr. Villarreal there was a possibility that the Permit Application would be dismissed if Mr. Villarreal did not attend the hearing, and that Mr. Villarreal had made no response other than to reiterate that he would not be attending the hearing.

The Hearing Examiner contacted the office of Kermit Daniels, attorney for the Applicant, and was informed that Mr. Daniels would not be attending the hearing. Therefore, the hearing was opened as scheduled and a record was made of Mr. Beck's conversation with Mr. Villarreal and of the Hearing Examiner's

attempt to contact Mr. Daniels. The applicable procedural rules on default and continuances were read into the record, and the Objectors were asked to state their motions for the record. Mr. John Manley and Mr. Greg Luinstra, counsel for Objector Larry Semenza, stated their opposition to any continuance in this matter.

The Hearings Examiner informed the Objectors that their Motions would be taken under advisement, and that the record would be left open until the Applicant or his counsel was given opportunity to show why a default should not be entered and why a continuance should be given. A letter stating the applicable rules on default and continuance and a summary of the August 31 hearing was sent to Mr. Daniels, and a copy sent to Mr. Villarreal. The letter stated that any request for continuance in this matter would have to state a specific basis for such request and would have to be received by September 10, 1984.

On September 10, 1984, Mr. Villarreal contacted the Hearing Examiner and asked about the status of his Application. Upon learning that he had not received the August 31 letter referred to above, the Hearing Examiner explained the situation to Mr. Villarreal, and asked him why he did not appear at the hearing set for that date. Mr. Villarreal stated that he had been involved in having persons removed from his mining claim as part of a quiet title action. The Hearing Examiner explained the bases for continuance, told Mr. Villarreal that Mr. Manley had testified that Mr. Villarreal had notice of the persons occupying his property as of the August 20, 1984 site visit attended by Mr.

Villarreal, Mr. Manley, and DNRC field office personnel, and asked Mr. Villarreal why he could not have attended the hearing and taken care of the other matters either prior to or following the hearing. Mr. Villarreal stated only that he wanted to take care of the other matter at that time. The Hearing Examiner then suggested to Mr. Villarreal that he contact his attorney.

When no further response was received, the Hearing Examiner contacted Mr. Daniels on September 11, 1984. Mr. Daniels stated that he had not been apprised of the August 31, 1984 letter, and that Mr. Villarreal had not been in contact with him since August 31. The Hearing Examiner informed Mr. Daniels that the return receipt for the August 31 letter indicated that the letter had been received by his office, and gave Mr. Daniels a summary of the situation. Mr. Daniels responded by saying that he would try to contact the Hearing Examiner when he was in Helena the next day.

Mr. Daniels called while the Hearing Examiner was unavailable the next day, and left a message stating that he would call back. No other call was received, and the Hearing Examiner has not been contacted further concerning this matter by either the Applicant or by his attorney.